IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 05.01.2007

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.TAMILVANAN

W.A. Nos.2668/2001 & 3970/2004
and
W.P. Nos.19668/2000 & 39300/2003

V.Muraleedharan ... Appellant / Petitioner in all the matters

Vs.

The Union of India, represented
by its Secretary,
Ministry of Home Affairs,
North Block, New Delhi-110 001. ... R-1 in all the matters.

The Deputy Inspector
General (Personnel),
Central Industrial Security Force,
13, C.G.O. Complex,
Lodhi Road, New Delhi-110 003. ... R-2 in all the matters.

The President,
Worshipping Committee [Mandir Committee],
C.I.S.F., R.T.C. Campus,
Suraksha (PO),
Thakkolam (Via) Arakkonam,
Tamil Nadu-631 151. ... R-3 in all the matters except W.P. No.19668 of 2000.

The Director General,
Central Industrial Security Force,
13, C.G.O.Complex,
Lodhi Road, New Delhi-110 003. ... R-3 in WP.19668/2000 and R-4 in other matters.

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Pratap Singh,
Assistant Inspector General (L&R),
13, C.G.O.Complex,
Lodhi Road, New Delhi-110 003. ... R-4 in WP.19668/2000

P.N.Deo,
Assistant Inspector General
(South Zone),
Rajaji Bhavan,
Besant Nagar, Chennai-600 090. ... R-5 in WP.19668/2000

W.A. No.2668 of 2001:- Appeal under Clause 15 of the Letters Patent as against the order of the learned single Judge, dated 21.11.2001, made in W.P. No.19667 of 2000.

W.A. No.3970 of 2004:- Appeal under Clause 15 of the Letters Patent as against the order of the learned single Judge, dated 29.09.2000, made in W.P. No.12090 of 1998 presented to this Court under Article 226 of the Constitution of India to issue a writ of certiorari calling for the records of the second respondent comprised in proceedings No.V-15014/07/97-L & R dated 24.4.98 and quash the same.

W.P. No.19668 of 2000:- Petition under Article 226 of the Constitution of India for the issuance of a writ of mandamus to direct the respondents to promote the petitioner to the rank of D.I.G. in the respondent Department with retrospective effect from 26th November, 1999, and place him above the juniors in the seniority with all consequential benefits, pay, salary and concomitant benefits.

W.P. No. 39300 of 2003:- Petition under Article 226 of the Constitution of India for the issuance of a writ of certiorari to call for the records of the 2nd respondent comprised in Proceedings No.V-15014/07/97/L&R, dated 21.10.2000, and to quash the same.

For Appellant/Petitioner : Mr.N.R.Chandran, Senior Counsel for Mr.K.Rajasekar

For Respondents in
Wps.19668/2000 & 39300/03: Mr.K.Veeraraghavan, SCGSC

For Respondents in WA
Nos.2668/01 & 3970/04 : Mr.S.Udayakumar, SCGSC

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COMMON JUDGMENT

(Judgment of the Court, delivered by P.SATHASIVAM, J.)

One V.Muraleedharan is the petitioner/appellant in all the above matters.

(a) Writ Appeal No.2668 of 2001 is filed as against the Order of the learned single Judge, dated 21.11.2001, made in W.P. No.19667 of 2000, in and by which, the learned Judge, after finding that there is no vagueness in the charges against the petitioner, dismissed his petition.

(b) Writ Appeal No.3970 of 2004 is preferred as against the order of the learned single Judge, dated 29.09.2000, made in W.P. No.12090 of 1998, in and by which, the learned Judge refused to accept the claim of the petitioner that there was inordinate delay in conducting enquiry in respect of alleged misdeeds pertaining to the period 1989-1995.

(c) In W.P. No.19668 of 2000, the petitioner has prayed for an appropriate direction for his promotion to the rank of D.I.G. in the respondent-Department and to place him above his juniors.

(d) In W.P. No.39300 of 2003, the prayer is for quashing of the inquiry proceedings dated 21.10.2000 on the ground of delay.

2. Inasmuch as the Writ Petitions and the Writ Appeals have been filed by the very same individual and the issue raised therein is also one and the same, they are being disposed of by the following common Judgment.

3. The case of the petitioner, in brief, is as follows :-

The writ petitioner was working as Commandant/Principal in the Central Industrial Security Force (in short 'CISF'), Recruits Training Centre (RTC), Arakkonam, from 24.06.1989 to 14.05.1995 and, thereafter, he was posted at the Units in the North-East and Eastern Sectors of India. Before his retirement, he was posted as the Commandant of the CISF Unit, V.S.S.C. (ISRO), Thumba, Trivandrum.

Originally, 9 charges were framed against him relating to some alleged incidents that took place in Arakkonam while he was serving as Commandant/Principal, CISF, RTC, with regard to certain affairs of a Temple (Mandir) in which he was the Honorary Ex-Officio President and a charge memo came to be served on him while he was posted at the XII Reserve Battalion at Farakka, West Bengal. Thereafter, he was posted to Trivandrum at the CISF Unit, ISRO, Thumba, and later, on 30.04.2002, he retired from service on

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attaining the age of superannuation.

The petitioner challenged the Charge Memo dated 24.04.1998 in W.P. No.12090 of 1998. By an order, dated 29.09.2000, this Court allowed the above Writ Petition, quashing the charge memo dated 24.04.1998 as vague, unclear and lacking in minimum particulars, however, granted liberty to the respondents to initiate fresh proceedings.

Soon after the charge memo was quashed by virtue of the Order passed in W.P. No.12090 of 1998, on 09.10.2000, the Departmental Promotion Committee (DPC) was held for consideration of the petitioner's case along with that of others. However, the D.P.C. was deliberately postponed to 23.10.2000. After the order, dated 20.10.2000, passed in the Writ Petition, on 21.10.2000 itself, a second charge memo with the very same defects but reducing the charges from 9 to 4 was issued and served on the petitioner on 22.10.2000.

On 23.10.2000, the DPC considered the petitioner's case and put the conclusion/recommendation in a sealed cover. Fresh set of four charges was challenged by the petitioner in W.P. No.19667 of 2000 and the matter was admitted on 23.11.2000 and interim stay was granted by this Court. The petitioner has also filed W.P. No.19668 of 2000 for a direction to grant him promotion. The said Petition was also admitted by this Court.

By Order dated 21.11.2001, the learned single Judge of this Court; after finding that though the Charge Memo may be bereft of material particulars and vague, if read in conjunction/combination with the annexed documents, it would no longer be vague; dismissed W.P. No.19667 of 2000. Questioning the said Order, the petitioner filed W.A. No.2668 of 2001. The said Writ Appeal was admitted and interim stay was granted. While hearing the Stay and Vacate Stay Petitions filed by the petitioner as well as the Department, after opening the sealed cover and finding that the petitioner was fit for promotion, this Court directed the respondents to promote him and also complete the enquiry within a period of four months. In the meanwhile, the petitioner attained superannuation on 30.04.2002. As against the above mentioned direction, the Department preferred an Appeal to the Supreme Court. The Supreme Court directed the respondents to complete the enquiry within a period of three months. The said Order was passed on 30.09.2002. In spite of the specific direction and extension of time, enquiry was not conducted within the stipulated time. Since 20 months have expired after the order passed on 09.04.2002 in Writ Appeal No.2668 of 2002 and 1 year & 3 months after the Order of the Supreme Court, and no steps have been taken to start the enquiry, the petitioner filed W.P. No.39300 of 2003 to quash the proceedings dated 21.10.2000 on the ground of

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delay.

Against the Order dated 29.09.2000 in W.P. No.12090 of 1998, the petitioner preferred W.A. No.3970 of 2004 and the same was admitted by this Court.

Even though the petitioner had 36 years of unblemished service and received several medals for his distinguished services, the respondents, due to bias, bent upon to continue the enquiry even after expiry of the time fixed by this Court as well as the Supreme Court. Inasmuch as he was charged with misconduct pertaining to the affairs of a temple, which was not connected with his affairs as an Officer of the Government and, at the relevant time, he was leading an organisation with 1500 staff under him, the respondents ought to have closed the enquiry and, at this juncture, it would be humanly impossible for the petitioner to defend his case. The delay caused by the respondents in initiating the enquiry would severely handicap the petitioner in substantiating his case/claim, therefore, the entire charge memo is to be quashed.

4. The case of the Department is briefly stated here-under, The petitioner, while in service, was proceeded against departmentally under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, mainly on the allegation that he, being posted and functioning as commandant/Principal, CISF, RTC, Arakkonam, during the period from 24.06.1989 to 14.05.1995, failed to maintain the Mandir Fund Accounts of CISF, RTC, Arakkonam, properly which resulted in embezzlement of approximately Rs.10,71,861.45 and misappropriation of sum of Rs.40,000/- which was collected from the recruits unauthorizedly through Hundi Parade held in May, 1995, at CISF, RTC, Arakkonam.

Pursuant to the Order dated 29.09.2000, quashing the first Charge Memo and granting liberty to issue fresh charge memo, fresh charges were framed and a Charge Memorandum dated 21.10.2000 was issued to the petitioner. Though the petitioner challenged the second charge memo, according to the Department, the same was rightly dismissed by this Court on 21.11.2001. Though an interim direction was issued for promotion to the next higher post, the said order was challenged before the Supreme Court. The Supreme Court, after hearing all the parties, set aside the direction regarding promotion and permitted the Department to proceed with the enquiry and decide the same expeditiously. In view of the Order of the Supreme Court, the petitioner has no right to challenge the order dated 29.09.2000 passed by the learned Judge in W.P. No.12090 of 1998. Accordingly, Writ Appeal No.3970 of 2004 is not maintainable as being infructuous and is liable to be dismissed.

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The claim of the petitioner that the fresh enquiry proceedings are also liable to the quashed on the ground of delay cannot be sustained. First of all, there was no delay on the part of the Department and secondly, it is the petitioner who approached this Court then and there and obtained an order of stay. According to the respondents, in view of the order of the Supreme Court in the SLP filed by the Department, the petitioner, being a party to the order, is estopped from proceeding with W.A. No.2668 of 2001 and WP No.19668 of 2000, which have become infructuous.

5. With the above pleadings, we heard Mr.N.R.Chandran, learned Senior Counsel for the petitioner/appellant, M/s.K.Veeraraghavan and S.Udayakumar, learned Senior Central Government Standing Counsels for the respondents.

6. Mr.N.R.Chandran, learned Senior Counsel for the petitioner, after taking us through the earlier charge memo, order of the learned single Judge quashing the same, subsequent charge memo and various orders passed by this Court as well as the Supreme Court, has mainly contended,

> (a) because of the inordinate delay in conducting the enquiry and of the fact that the petitioner had attained superannuation even on 30.04.2002, the respondents are not entitled to proceed with the enquiry;
>
> (b) Inasmuch as official bias was the main cause for issuing the fresh charge memo, and in view of the conclusion of the DPC, as seen by this Court by opening the sealed cover, the entire proceedings are liable to be quashed;
>
> (c) Even after quashing of the first charge memo, the authorities have not rectified the mistake and the second charge memo is also liable to be interfered with on the ground of vagueness since it is identical to the earlier one.

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7. On the other hand, Mr.Veeraraghavan, learned Senior Central Government Standing Counsel appearing for the respondents, refuting all the allegations, contended that the Department was in no way responsible for the delay. He further contended that action was taken based on the complaint and in accordance with the Rules and that enquiry will be conducted after affording adequate opportunity to the petitioner. There is no merit in the claim of the petitioner that even the second charge memo is vague and liable to

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be quahsed.

8. We perused all the relevant materials and carefully considered the rival contentions.

9. At the foremost, let us consider the argument relating to delay in conducting the enquiry.

We are conscious of the fact that a charge memorandum cannot be quashed on the mere ground of delay. However, if it is established that the Department had not taken effective steps in respect of the alleged omissions/commissions at the appropriate stage/time and that the delay prejudiced the petitioner in defending his case, undoubtedly, such aspect alone could be taken as a sole ground to quash the charge memo. The following particulars viz., dates and events, are relevant for considering the issue relating to delay.

10. It is brought to our notice that the petitioner joined the Indian Army as a Commissioned Officer in February, 1964. In 1965, he participated in the Indo-Pak conflict and was awarded Samar Seva Star. Thereafter, on 05.05.1971, he joined the CISF. Again in 1971 itself, he was recalled to the Army, took part in the 1971 Indo-Pakistan War and was awarded the Sangram Medal for War Services. In July, 1986, he was promoted as Commandant. On 24.06.1989, he joined CISF Training Centre, Arakkonam, Tamil Nadu, as its Principal/Commandant. In 1991, construction of Lord Krishna Temple began from the contributions of public as well as inmates of the Training centre. Apart from the Temple, foundation was also laid for a Church, Mosque and Gurudwara. A Managing Committee was formed, comprising of various members of the Training Centre; the Commandant/Principal being the Ex-officio President. In 1993, the construction was completed. On 26.01.1994, he was awarded the President's Police Medal for Distinguished Service on the 25th Raising Day of C.I.S.F. In October, 1994, he was promoted as Selection Grade Commandant and, on 14.05.1995, he relinquished the charge as Principal of Training. According to him, in December, 1996, he was awarded the Director General's Commendation Disc. First charge memo containing 9 charges was framed on 24.04.1998. Questioning the same, the petitioner filed W.P. Nos.12089 and 12090 of 1998 on 13.08.1998. Finally, on 29.09.2000, both the Writ Petitions were allowed on the ground that the charges are vague and bereft of material particulars, however, liberty was granted to the respondents to initiate fresh proceedings. New charge memo (2nd charge memo) was issued on 21.10.2000, containing four charges. The same was served on the petitioner on 22.10.2000. The petitioner filed W.P. No.19667 of 2000 on 23.11.2000, challenging the second charge memo, and the same was admitted and stay was granted by this court, however, on 21.11.2001, the said writ petition was dismissed.

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On 30.11.2001, the petitioner preferred W.A. No.2668 of 2001, which was admitted by this Court. On 09.04.2002, interim order granted earlier was modified and a direction was issued to grant promotion. In the same order, further direction was issued for completion of the enquiry within a period of four months. As said earlier, on 30.04.2002, the petitioner retired from service. In July, 2002, the Department preferred appeal to the Supreme Court against the direction of the High Court to grant promotion. On 26.07.2002, first enquiry officer was appointed and, on 04.07.2003, 2nd enquiry officer was appointed. On 16.07.2003, the Department appointed a new Presenting Officer. On 30.09.2002, the Supreme Court allowed the appeal (Civil Appeal Nos.6419-6420 of 2002) in part, however, permitted the Department to proceed with the enquiry and decide the same expeditiously. Thereafter, on 30.10.2003, third Enquiry Officer was appointed. After noting that the Department is not evincing any interest in continuing the enquiry, the petitioner filed W.P. No.39300 of 2003 on 31.12.2003. This Court admitted the said Writ Petition and also granted stay. On 16.08.2004, fourth Enquiry Officer was appointed.

11. By drawing our attention to the above dates and events, Mr.N.R.Chandran, learned Senior Counsel for the petitioner, vehemently contended that the alleged misdeeds pertain to the period 1989-1995 and no step was taken till 24.04.1998 on which date, the first charge memo was issued. According to him, though the said charge memo was quashed by this Court with liberty to the Department to issue fresh charge memo, even thereafter, the Department was not evincing any interest in pursuing the same. It is relevant to point out that the Supreme Court allowed the Appeal preferred by the Department in part even as early as on 30.09.2002. Absolutely there is no explanation for not proceeding with the enquiry even though the Supreme Court specifically directed the respondents to proceed with the enquiry and decide the issue expeditiously. As stated earlier, nearly after one year and one month, the Department appointed third Enquiry Officer on 30.10.2003.

12. Mr.K.Veeraraghavan, learned Senior Central Government Standing Counsel for the respondents, submitted that there was no undue delay in pursuing the enquiry as claimed by the learned Senior Counsel for the petitioner. We are unable to accept the said contention. We have already mentioned that, even as per the charge memo, the alleged misdeeds pertain to the period 1989-1995. There is no acceptable reason for not taking any action till 24.04.1998 even though the petitioner relinquished his post as principal of training as early as on 14.05.1995. In other words, the initiation itself was only after a period of three years. There is no explanation at all on the side of the respondents for the delay.

13. The records produced before us clearly show that, even

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before the Supreme Court, the Department sought for only three months' additional time to complete the enquiry and that, after acceding to the request of the Department, the Supreme Court directed them to complete the enquiry expeditiously. The said order was passed on 30.09.2002. In spite of the period of three months being over and thereafter one year has also elapsed, the respondents did not take any step to commence/complete the enquiry as directed by this Court as well as the Supreme Court. As rightly pointed out by the learned Senior Counsel for the petitioner, after orders were passed on 09.04.2002 in W.A. No.2668 of 2002, 20 months had expired and, after the Supreme Court passed orders on their request for three months' time, 1 year and 4 months had expired, yet, the respondents have not taken any step to commence the enquiry. The only step that was taken by the Department during the relevant period was that they changed their Enquiry Officers on three occasions. It is not clear as to why the Department did not make use of the time granted by the Supreme Court for completion of the enquiry. Though an argument was advanced on the side of the respondents that the petitioner approached this Court and obtained an order of stay, the records show that, only on 31.12.2003, the petitioner filed W.P. No.39300 of 2003, on the ground that, after the direction of the Supreme Court, there was a huge delay and it would be difficult for him to substantiate/establish his case effectively by letting oral and documentary evidence. The particulars furnished, which we have already mentioned, clearly show that there was a lapse on the part of the Department in the initiation of the proceedings and secondly, even after the direction of this Court as well as the Supreme Court, granting extension of time, admittedly, no action was taken by the Department till 30.10.2003 when third Enquiry Officer was appointed. As rightly pointed out, since the petitioner retired from service as early as on 30.04.2002, it would be difficult for him to examine the witnesses in support of his defence. The delay on the part of the respondents is in gross violation of the orders of this Court as well as the Supreme Court and the materials placed would show that, for one year and 8 months, nothing has happened. Even at the relevant time, the petitioner was nearing 62 years and, as on date, he is aged 65. As rightly pointed out by the learned Senior Counsel for the petitioner, when the allegation was made against a person who had put in 36 years of service and rendered war services in the Indian Army on two occasions, the Department should have concluded the proceedings expeditiously and their lethargic attitude in taking their own time to begin the enquiry should not be encouraged. Though the learned single Judge (in WP No.12090 of 1998) considered this aspect, committed an error in holding that the petitioner was also responsible for the delay since he filed several writ petitions questioning the proceedings on some ground or other. In view of the facts and events and other details as referred to above, we are unable to accept the said conclusion. It is settled

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law that the delinquent employee has a right that the disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss. In considering whether the delay has vitiated the Disciplinary Proceedings, the Court has to consider the nature of charge, its complexity and on what account, the delay has occurred. If the delay is unexplained, prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee. Though the Disciplinary proceeding should be allowed to take its course as per relevant rules, it should not be forgotten that delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, it is for the court to balance between these two diverse considerations. As observed earlier, there is no acceptable reason for not pursuing the enquiry immediately after the order of the Supreme Court, dated 30.09.2002, in such circumstances, the contrary conclusion arrived at by the learned Judge cannot be sustained. Thus, we hold that the respondents are responsible for the delay and, in view of the fact that the petitioner had attained superannuation on 30.04.2002, undoubtedly, at this point of time, it would be rather impossible for him to defend his case/claim by producing witnesses and placing documents in support of his defence.

14. Coming to the second contention, viz., official bias, as rightly pointed out by the learned Senior Counsel for the petitioner, the charge memo relates to certain omissions/commissions in a Temple's account. According to the department, the petitioner was the Ex-officio President of the Temple. It is seen from the materials placed and the report of the Auditor that M/s.Jegannathan and Murugan were in charge of maintenance of the accounts relating to the temple. Admittedly, no action was taken against them. The Audit Report, which is available in the Typed Set of Papers, clearly show that several other officers were dealing with the accounts of the temple and, admittedly, no action was taken against them. As per the CISF Unit Mandir Fund Rules (5.8 and 5.9), the accounts of the funds will be maintained by the Clerk to be detailed by the Commandant (petitioner) for the purpose. It is clear from the Rules and the materials placed that, though several persons were in charge of the accounts, no action was taken against any one of them except the petitioner who was holding the post of Ex Officio President. The conduct of the respondents in not taking action against others clearly shows bias on their part. We have already referred to the claim of the petitioner that, in order to curtail his promotion, the DPC was postponed twice and ultimately sealed cover system was adopted. We have already mentioned that, on the direction of this Court, the sealed cover was opened and this Court found that the petitioner was eligible to be promoted. Considering all these

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aspects and in the absence of any specific denial by the respondents, we accept the argument of the learned Senior Counsel for the petitioner.

15. Coming to the other contention, viz., vagueness, in view of our discussion and ultimate conclusion relating to delay and official bias, we are of the view that there is no need to go into the said aspect. Hence, we desist from analysing the said aspect.

16. We deem it necessary to point out here that merely because a person has rendered a long and laudable service, it does not mean that the Charge Memorandum issued or the enquiry proceedings initiated against him for alleged misconduct or misdeed be obliterated on that ground. At the same time, the Department/Disciplinary Authority cannot be allowed to adopt a pick and choose policy and to conduct the proceedings in an unfair and biased manner, deviating from the basic procedural norms and legal principles. Such authorization would definitely cause great prejudice to the delinquent officer, particularly where he has no effective defence to substantiate his case, and result in gross violation of the principles of natural justice. It is abundantly clear that the petitioner herein was singled out to see that he is entangled in dilemma and that, had there been an unbiased approach on the part of the Department, the sequence of the proceedings would have been in proper course without any hiccup. The other aspect is that the proceedings did not encompass all those who were connected with the financial affairs of the temple so as to bring the real state of affairs to light and that, interestingly, in spite of the Court's granting the required time sought by the Department, the enquiry proceedings were moving in snail's space as if the matter involves an arduous investigation and compliance of cumbersome procedural requirements. Such strange approach leads to a strong presumption of 'official bias' or selective approach and there is no plausible explanation forthcoming from the side of the authority. When admittedly the petitioner is not at all in a position to defend himself as, at this point of time, it is highly impossible to summon the witnesses and have easy access to the materials to clear him of the allegation, this Court cannot close its eyes to the acute sluggishness and selective approach on the part of the Department and allow it to proceed in its own relaxed way. There is no meaning at all in permitting an enquiry proceeding to continue against a person who is not at all armoured with defence against the charges levelled against him. Hence, we have no other option except to annul the proceedings initiated against the petitioner due to the deep indolence and selective/biased approach of the Department.

17. In the light of the above discussion, we conclude that, at this juncture, the respondents cannot be permitted to proceed with the enquiry, at the same time, in view of the statement

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made before the Supreme Court, giving up the challenge relating to promotion; no direction could be granted for promotion. Accordingly, W.P. No.19668 of 2000 is dismissed. W.A. No.2668 of 2001 is dismissed as unnecessary. W.A. No.3970 of 2004 and W.P. No.39300 of 2003 are allowed. No costs. Considering the length of service and of the fact that the petitioner retired even on 30.04.2002, the respondents are directed to settle all the retirement benefits expeditiously.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

JI.

To

1. The Secretary, Union of India,
   Ministry of Home Affairs,
   North Block, New Delhi-110 001.

2. The Deputy Inspector General (Personnel),
   Central Industrial Security Force,
   13, C.G.O. Complex, Lodhi Road, New Delhi-110 003.

3. The Director General, Central Industrial Security Force,
   13, C.G.O.Complex, Lodhi Road, New Delhi-110 003.

1 cc to Mr.S. Udayakumar, SCGSC, Sr. 1051
1 cc to Mr.K. Veeraraghavan, SCGSC, Sr. 1065
3 ccs to Mr.V. Ramajagadeesan, Advocate, Sr. 1063

W.A.Nos.2668/01 & 3970/04 and
W.P.Nos.19668/2000 & 39300 of 2003.

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